

Sheldon Eisenberger (SE-2021)  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FIDELITY BROKERAGE SERVICES LLC,

Plaintiff,

-against-

MARSHALL CARO, WALTER RAQUET,  
INDII.COM USE, LLC and BILL ROTHFARB,

Defendants.

:  
:  
: Case No. 10-CV-5893 (BSJ)  
:  
: **DECLARATION OF SHELDON**  
: **EISENBERGER IN SUPPORT OF**  
: **MOTION TO DISMISS THE**  
: **INTERPLEADER COMPLAINT**  
:  
:  
:

Sheldon Eisenberger solemnly declares under penalty of perjury as follows:

1. I am a member of the bar of this Court and of the firm The Law Office of Sheldon Eisenberger counsel for defendants Marshall Caro ("Caro") and Indii.com USE, LLC ("Indii") (collectively, the "Caro Defendants") in this matter. I submit this declaration in support of the Caro Defendants' motion to dismiss the complaint in this matter pursuant to Rules 12(b)(1) and 12(b)(6) for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. I have personal knowledge of the facts set forth below. A copy of the complaint in this matter is annexed hereto as Exhibit A.

2. In support of the instant motion, the Caro Defendants are relying on the arguments set forth in Declaration of Marshall Caro and accompanying Memorandum of Law submitted in opposition plaintiff's motion for interpleader and related injunctive relief, copies of which are respectively annexed hereto as Exhibits B and C.

3. As set forth therein, the complaint fails to state a claim for which relief can be granted because of the absence of legitimate competing claims between defendant Bill Rothfarb and Indii.

4. Moreover, plaintiff failed to properly allege the citizenship of Indii, which, as a limited liability company, is controlled by the citizenship of Indii's members. As set forth in the Caro Defendants' previously submitted papers, Indii's operating agreement lists several entities as strategic members, and several of these strategic members are citizens of New York for purposes of diversity.

5. The strategic members of Indii are listed at Schedule 3 to Indii operating agreement, which is annexed to the previously submitted Declaration of Marshall Caro as Exhibit A. Several of these entities are New York citizens for purposes of diversity jurisdiction i.e. with either a place of incorporation or principle place of business within the State of New York. Annexed hereto as Exhibit D are copies of documents obtained from the New York State, Department of State, Division of Corporations website, which contain citizenship information for several of the companies listed as strategic members of Indii.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of October, 2010, in New York, New York.

/s/ Sheldon Eisenberger  
Sheldon Eisenberger